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Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples

Gibraltar

Working paper prepared by the Secretariat

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I. General¹

1. Gibraltar is a narrow peninsula extending southward from the south-west coast of Spain, to which it is connected by an isthmus about 1.6 kilometres long. The Spanish port of Algeciras lies 8 kilometres across the bay to the west; the continent of Africa is situated 32 kilometres across the Strait of Gibraltar to the south. According to the United Kingdom of Great Britain and Northern Ireland, the area of Gibraltar is 5.86 square kilometres, and according to Spain it is 4.8 square kilometres. In 2004, Gibraltar observed the anniversary of 300 years under British rule.

2. The latest census of Gibraltar, taken on 12 November 2001, assessed the Territory's civilian population at 27,495, of which 22,882 were Gibraltarians, 2,627 other British subjects, 961 Moroccans and 1,025 of other nationalities. According to the administering Power, the population of Gibraltar in 2003 was 28,605, with 23,069 Gibraltarians, 3,270 other British subjects and 2,266 of other nationalities.

II. Political developments

A. General

3. The 1969 Constitution guarantees basic civil and political rights and attributes. It assigns responsibility for local matters to a local government. The United Kingdom, however, retains power over matters of defence, external affairs and internal security. The Governor, appointed by the sovereign of the United Kingdom, retains the power to rescind laws passed by the legislature. Furthermore, the Constitution reserves for the sovereign full power to make laws from time to time for the peace, order and good government of Gibraltar (including, without prejudice to the generality of the foregoing, laws amending or revoking that Constitution). A new Governor, Sir Francis Richard, replaced outgoing Governor David Durie in May 2003. A detailed discussion about the 1969 Constitution, including the positions of Spain and the United Kingdom, is contained in the report of the Special Committee to the General Assembly at its twenty-fourth session.²

4. Legislative authority is vested in a single House of Assembly consisting of 15 elected members. Executive authority is vested in a Council, which is composed of the Governor, four ex officio members, the Chief Minister and four elected members, and which assists the Governor in an advisory capacity. The Council of Ministers is made up of the Chief Minister, members of the House of Assembly designated by the Chief Minister and some elected members. The Council of Ministers, which acts as a cabinet, holds responsibility for specific domestic matters, with the Governor retaining the prerogative to intervene in support of his responsibilities for defence and external affairs.

5. The legal system of Gibraltar is based on the common law and statute law of England. Gibraltar retains its own court system, which includes lower courts (Court of First Instance, Coroner's Court, Magistrate's Court), a Court of Appeals and a Supreme Court. The Supreme Court has unlimited jurisdiction to hear and determine any civil or criminal proceedings. At present, it consists of the Chief Justice and an additional judge appointed by the Governor.

6. The United Kingdom's White Paper entitled "Partnership for Progress and Prosperity: Britain and the Overseas Territories",³ presented to Parliament in March 1999, spoke of each Territory's need for a constitutional framework to suit its own circumstances and stated that suggestions from Overseas Territory Governments for specific proposals for constitutional change would be considered carefully. In June 1999, Gibraltar's House of Assembly set up a Select Committee on constitutional reform and on 27 February 2002 formally adopted a report on the matter. The Chief Minister said that the object of the exercise had been to achieve a constitution that "maximized self-government", in the language of the United Nations decolonization proposals, and modernized domestic institutions to reflect that. (See A/AC.109/2002/11, para. 6, for details of the proposed constitution, as reported by the local media.)

7. The Chief Minister of Gibraltar submitted the constitutional reform proposals formally to the Secretary of State for Foreign and Commonwealth Affairs of the United Kingdom on 22 December 2003 and suggested that the two meet informally to discuss the proposals and the way forward.⁴ The Secretary of State has acknowledged the importance of those proposals to Gibraltar and said that they would receive the most careful consideration. Preliminary talks were held between the Secretary for Foreign Affairs, Jack Straw, and the Chief Minister of Gibraltar, Peter Caruana, in May 2004 in order to discuss matters relating to the constitutional reform and how to move the process forward. The first meeting to discuss constitutional reform proposals for Gibraltar took place on 1 December 2004.

B. General elections

8. The last general elections in Gibraltar were held on 27 November 2003. The incumbent Gibraltar Social Democratic Party obtained 51 per cent of the vote, followed by the Gibraltar Socialist Labour Party, which, in alliance with the Liberal Party, obtained 40 per cent of the vote. Peter Caruana, leader of the Gibraltar Social Democratic Party, was reappointed Chief Minister of Gibraltar. Joseph Bossano continues as Leader of the Opposition.

C. Recent developments

9. The British Overseas Territories Bill, which confers British citizenship on British Overseas Territories citizens, completed its parliamentary process in 2001-2002. It received Royal Assent on 26 February 2002 and became the British Overseas Territories Act 2002 (see A/AC.109/2002/2/Add.1). Under the British Nationality Act of 1981, British Overseas Territories citizens from Gibraltar are, upon application, entitled to be registered as British citizens. Accordingly, many Gibraltarians already possess British citizenship and thus have the right of abode in the United Kingdom.⁵ In July 2001, the Chief Minister of Gibraltar stated that for those Gibraltarians who already had or might in future want British citizenship, as opposed to British Overseas Territories citizenship, the new Bill represented a great improvement, as it gave "first class" British citizenship, without the need to apply to register, and in such a way as to be automatically passed on to children and future generations.⁶

10. Although Gibraltar's military installations and personnel have been scaled down considerably in the past 15 years, the Strategic Defence Review launched by the United Kingdom Government in May 1997 placed renewed emphasis on the rapid deployment of British forces in response to crisis and pointed out that Gibraltar's facilities provided an independent forward operating base for British forces in the Mediterranean and served as a transit base for vessels en route to the Middle East and elsewhere. According to a report published in November 2002 by the Foreign Affairs Committee of the House of Commons, the Territory's strategic importance remains undiminished in the twenty-first century. Some 440 British military personnel are based in Gibraltar.⁷

11. As mentioned in the 2004 working paper (A/AC.109/2004/7), the talks envisaged in the framework of the Brussels Process did not continue during 2003 (see paras. 52-54 below). Instead, in December 2004, in a joint communiqué issued by Spain, the United Kingdom and Gibraltar, it was announced that a forum for dialogue about Gibraltar had been established, separate from the Brussels Process, with Gibraltar participating in its own right. The forum would have an open agenda. The positions of the administering Power, the territorial Government and the Government of Spain regarding political developments in 2003 are reflected in section VI of the present report.

III. Economic conditions

A. General

12. Gibraltar has no known natural resources and lacks agricultural land. In the past the economy was largely dependent on Ministry of Defence expenditures, but with the downsizing of the military base, the economy has become focused on tourism and the provision of financial services, such as banking, insurance, shipping and portfolio management. The currency of Gibraltar is the pound sterling. According to the administering Power, the gross domestic product (GDP) of Gibraltar in 1999/00 was £433.6 million, and per capita GDP was £15,863. Inflation in October 2003 was running at an annual rate of 3 per cent. In June 2004, the Chief Minister stated at the Parliament's budget session that Gibraltar's economy, despite the external challenges it faced, was in robust shape and continued to grow at healthy rates. In 2001/02, the GDP had grown from £433.6 million to £470.2 million, representing an annual economic growth rate of 8.4 per cent in money terms and 7.8 per cent in real terms after deducting inflation. Subsequently, in a speech on the economy made on 27 January 2005, the Chief Minister pointed out that, as of March 2003, GDP had grown to £507 million, an increase of 7.9 per cent.

B. Public finance

13. According to the administering Power, departmental revenue credited to the Consolidated Fund for the year ending on 31 March 2004 totalled £163.7 million and departmental expenditure amounted to £139 million. The main sources of Consolidated Fund revenues were income tax, which totalled £71.1 million; import duties, which totalled £28 million; and general rates, which totalled £12.7 million.

The main Consolidated Fund areas of expenditure for the period April 2003 to March 2004 were as follows: education and culture, £19.9 million; electricity, £8.1 million; social security and social services, £13.6 million; technical services, £12 million; health, £14.4 million; police, £8.6 million; tourism and transport, £7.8 million; housing, building and works, £8.8 million; secretariat, £13 million; environment, £6 million; treasury, £5 million; customs, £3.8 million; fire service, £2.8 million; trade, industry and communications, £2.7 million; post office £2.1 million; and employment and consumer affairs, £1.5 million.

14. Income tax is charged for the year of assessment running from 1 July in one calendar year to 30 June in the next on the basis of the income of the preceding year, except for income from employment or pension, which is charged on the basis of the income for that current year. The income tax rates applicable to individuals resident in Gibraltar range from 17 per cent on the first £4,000 of taxable income to 45 per cent after the first £15,000 (see A/AC.109/2001/10, para. 16, for details of income tax and exemptions). In his 27 January 2005 speech on the economy, the Chief Minister stated that Government revenue was at an all time record level, which had allowed investment of more than £150 million over eight years in publicly funded capital projects. This in turn had made it possible to increase recurrent public spending in public services. Government reserves were forecast to stand at £35 million as at March 2005.

C. Trade

15. As reported in the previous working paper (A/AC.109/2004/7), figures for 2002 show that total imports amounted to £609.7 million (up from £590.7 million in 2001) and total exports to £428.7 million (up from £362 million in 2001). In 2003, total imports amounted to £715.5 million, while total exports stood at £508.5 million. In 2004, the administering Power reported that nearly 28 per cent of Gibraltar's non-fuel imports originated from the United Kingdom. Other sources of imports included the Netherlands, Japan and Spain. Exports of goods of local origin were negligible. Exports consisted mainly of re-exports of petroleum and petroleum products supplied to ships. Import controls did not change during the period under review. Other than a few items of essential foodstuffs, gold bullion and gold coins, petrol, caravans, vessels, endangered species, fireworks and cigarettes, all goods can be imported under the Open General Licence.

D. Banking and finance

16. Gibraltar's international financial services sector stems from the enactment of the Companies (Taxation and Concessions) Ordinance in 1967, which made provision for a special tax regime for offshore companies. In 1997, the Gibraltar Finance Centre was established within the Department of Trade and Industry as the focal point for all financial activities in the Territory. At the end of 2004, there were 18 banks authorized to conduct banking business in Gibraltar. As at 31 December 2003, there were also some 8,464 fully paid companies (down from 8,620 in December 2002) registered under the Companies (Taxation and Concession) Ordinance. These companies pay a fixed annual tax, irrespective of profits made and whether or not their profits are received in the Territory.

17. For a summary of developments regarding European Union directives and their implementation in Gibraltar, see the 2004 working paper prepared by the Secretariat (A/AC.109/2004/7, paras. 17 and 18).

18. A report issued in June 2000 by the Organization for Economic Cooperation and Development (OECD) included Gibraltar in a list of 35 jurisdictions that met the technical criteria for being tax havens.⁸ On 28 February 2002, the Gibraltar Government agreed in writing to implement the principles required by OECD. On 14 March 2002, OECD announced that Gibraltar had made commitments to transparency and to implement an effective exchange of tax information with OECD countries by 31 December 2005, and would thus be removed from the list of uncooperative tax havens.⁹ The detailed list of commitments made by Gibraltar in order to comply with OECD requirements was published in both the Gibraltarian and the Spanish media.¹⁰

19. In January 2005, the European Union's executive arm ordered the United Kingdom to phase out a tax break for offshore companies based in Gibraltar after finding the arrangement not in accordance with European Union competition rules. According to press sources, the European Commission had stated that, after extensive negotiations, it was giving the United Kingdom Government a month to accept its recommendations or face a State aid investigation that could lead to legal action. Under the "Exempt Company" scheme offered by the authorities in Gibraltar, more than 8,000 offshore firms escape having to pay income tax on their earnings. Instead, they have to pay a fixed annual tax set at a nominal amount of £225 to £300. Companies qualify if they register in Gibraltar but do not conduct any business there or have any Gibraltarian shareholders. Other firms trading in the Territory must pay a standard 35 per cent tax on their profits. The European Commission said in a statement that such advantage is clearly selective, is financed from State resources and is liable to distort competition. The European Commission also pointed out that the regime did not satisfy the criteria set out in European Union law under which State aid may be authorized.

20. Under this proposal, the number of companies benefiting from the scheme would be capped at current levels and no new entrants would be allowed from July 2006. The tax break would then be eliminated at the end of 2010.¹¹ Referring to these developments, the Chief Minister of Gibraltar, in a speech on the economy, mentioned that the full European Union Commission had ratified the agreement negotiated by the Gibraltar Government in relation to the continuation of tax exempt status on agreed terms. The Chief Minister pointed out that while the agreement did not contain everything that Gibraltar had wanted, it delivered sufficient certainty and stability.¹²

E. Transportation, communications and utilities

21. According to the administering Power, arrivals in Gibraltar are by air, primarily from the United Kingdom; by sea, comprising ferry arrivals from Morocco and day-trip arrivals from cruise ships; and by land, comprising mainly day visitors arriving from Spain. Passenger arrivals for 2004 were as follows: air arrivals, 157,016; ferry arrivals, 24,833; cruise visitors, 162,780; and visitor arrivals by land, 7,311,555.

22. Regarding road transportation in and out of Gibraltar, in recent years the border issue has been raised by the United Kingdom in contacts with the Spanish authorities (see A/AC.109/2001/10, para. 22, A/AC.109/2002/11, para. 20 and A/AC.109/2004/7, para. 20).

23. There are regular airline services linking Gibraltar to the United Kingdom and Morocco. In recent years, the issue of Gibraltar's airport was reported to be holding up European Commission aviation agreements on a "single European sky".¹³ For a summary of related developments see paragraph 21 of the previous working paper. On 11 December 2003, the Joint Conciliation Committee of the European Parliament and the Council approved the joint text of the framework regulation for the creation of the Single European Sky. Paragraph 5 of article 1 of that instrument suspends application of the regulation and certain measures for the airport of Gibraltar until the arrangements included in the Joint Declaration made by the Foreign Ministers of the Kingdom of Spain and the United Kingdom on 2 December 1987 come into operation. The Governments of Spain and the United Kingdom are expected to inform the Council of the date of entry into operation.¹⁴ Following talks at the ministerial level between Spain and the United Kingdom in October 2004, it was agreed by both sides and by Gibraltar that the new forum for dialogue on Gibraltar (see paras. 52-55 below) would explore the possibilities to reach an agreement on the use of the Gibraltar airport under a formula acceptable to all parties.

24. As the Strait of Gibraltar is a principal water route between the Mediterranean Sea and the rest of the world, Gibraltar is used as a port by many long-distance liners and cargo ships.

25. For developments relating to telephone communications and the international dialling code for Gibraltar, see the 2004 working paper A/AC.109/2004/7, paragraphs 23 and 24.

F. Tourism

26. The total number of visitors that arrived in Gibraltar in 2003 was 7.8 million, compared to 7.6 million in 2002. There were 61,743 hotel arrivals in 2003, an increase over 2002, in which 53,417 hotel arrivals were registered.

IV. Social conditions

A. Labour

27. According to the administering Power, the 2003 employment survey placed the number of employees in Gibraltar at approximately 15,419, compared to 14,266 in 2002. In his statement at the budget session in June 2004, the Chief Minister pointed out that some 600 to 700 additional new jobs were created in 2003, an increase of nearly 5 per cent. At the end of 2004, the distribution of persons employed by the five largest sectors was as follows: banking and finance, 2,706; public administration and defence, 2,952; retail trade, 1,873; building and construction, 1,665; and medical and health services, 1,223. In his statement to Parliament, the Chief Minister stated that the number of jobs in the economy was at an all time high

and still growing, while the unemployment rate was at a record low, at less than 2 per cent.

B. Human rights

28. The Gibraltar (Constitution) Order of 1969 guarantees the protection of the fundamental rights and freedoms of the individual and the maintenance of a Supreme Court with unlimited jurisdiction to hear and determine any civil or criminal proceedings under any law and with such jurisdiction and powers as are conferred upon it by the Constitution of Gibraltar or any other law. Several major international human rights instruments have been extended to the Territory by the administering Power (see A/AC.109/2001/10, para. 33).

29. The issues concerning the right of the inhabitants of Gibraltar to vote in European parliamentary elections were discussed previously in the 2003 and 2004 working papers (A/AC.109/2003/3, para. 27, and A/AC.109/2004/7, para. 28).

C. Social security and welfare

30. For details of the contributory schemes of the Social Security system, see A/AC.109/2001/10, paragraph 40.

D. Public health

31. The Gibraltar Health Authority is the organization responsible for providing health care in Gibraltar. It operates a group practice medical contributory scheme and gives registered persons access to free medical treatment (for a description of the available medical facilities, see A/AC.109/2001/10, paras. 42 and 43). The expenditure of the Gibraltar Health Authority for the period from 1 April 2003 to 31 March 2004 was £42.39 million. The new 200-bed St. Bernard's Hospital at Europort, representing an investment of £55 million, opened in February 2005. The Minister for Health, Ernest Britto, said that the new state-of-the-art hospital heralded a new era in health care in Gibraltar.¹⁵

E. Public education

32. The Education Department continues to be in charge of public education in Gibraltar. Expenditure on education as at the end of March 2004 was £19.70 million. A programme of major improvements to Government schools, at a cost of £11 million was completed in 2004. As at the end of 2003, there was a total of 5,411 children enrolled in Government schools, including Government nurseries. There is free compulsory education for all entitled children between the ages of 5 and 15. There are 13 primary schools — 11 Government-run, 1 private and 1 services school — with a total of 3,723 students enrolled. There were also four single-sex secondary schools — two Government-run schools, with a total of 2,413 students, and two private schools. There is also a technical and vocational college with 371 students enrolled. The number of teachers employed in Gibraltar during the 2003/04 academic year was 381. All tertiary education is sponsored, and

students satisfying entry criteria are entitled to scholarships to study in the United Kingdom. In 2004, 504 Gibraltarians were reportedly pursuing higher education studies in the United Kingdom.

F. Crime and crime prevention

33. Law enforcement in the Territory is the responsibility of the Royal Gibraltar Police. According to data provided by the administering Power, from January to December 2004, 1,760 persons were arrested for minor offences, such as those related to liquor, disorderly conduct and immigration violations. During the same period, 2,060 persons were arrested for serious crimes, such as those related to violence against the person, sexual offences, burglary and drugs.

V. Consideration by the United Nations

A. Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples

34. Representatives of Spain and the United Kingdom attended the Pacific regional seminar on advancing the decolonization process in the Pacific region, held at Madang, Papua New Guinea, from 18 to 20 May 2004.

35. The Special Committee considered the question of Gibraltar at its 4th meeting, on 8 June 2004 (see A/AC.109/2004/SR.4), and had before it a working paper concerning the Territory (A/AC.109/2004/7). At the same meeting, the Chief Minister of Gibraltar, Peter Caruana, made a statement and replied to questions posed to him by the representative of Cuba (see A/AC.109/2004/SR.4). At the same meeting, a statement was made by Joseph Bossano, Leader of the Opposition in Gibraltar. Also at the 4th meeting, the Committee heard a statement by the representative of Spain. On the proposal of the Chairman, the Committee decided to continue consideration of the question at its next session and to transmit the relevant documentation to the General Assembly.

B. Special Political and Decolonization Committee (Fourth Committee)

36. At its 4th meeting, on 6 October 2004 (see A/C.4/59/SR.4), the Fourth Committee heard a statement by the Chief Minister of Gibraltar, Peter Caruana (see paras. 45-46 below), and a statement by petitioner Joseph Bossano, Leader of the Opposition in Gibraltar. At the same meeting, the Committee heard a statement by the representative of Spain (see paras. 49-51 below). At the same meeting, the representative of the United Kingdom made a statement in exercise of the right of reply. At its 8th meeting, on 12 October 2004, the Committee adopted a draft decision submitted by the Chairman on the question of Gibraltar (A/C.4/59/L.6) without a vote.

C. Action by the General Assembly

37. At its 71st plenary meeting, on 10 December 2004 (see A/59/PV.71), the General Assembly, on the recommendation of the Fourth Committee, adopted decision 59/519 without a vote. The decision reads as follows:

“The General Assembly, recalling its decision 58/526 of 9 December 2003, and recalling at the same time that the statement agreed to by the Governments of Spain and the United Kingdom of Great Britain and Northern Ireland at Brussels on 27 November 1984 stipulates, *inter alia*, the following:

‘The establishment of a negotiating process aimed at overcoming all the differences between them over Gibraltar and at promoting cooperation on a mutually beneficial basis on economic, cultural, touristic, aviation, military and environmental matters. Both sides accept that the issues of sovereignty will be discussed in that process. The British Government will fully maintain its commitment to honour the wishes of the people of Gibraltar as set out in the preamble of the 1969 Constitution’.

urges both Governments, while listening to the interests and aspirations of Gibraltar, to reach in the spirit of that statement a definitive solution to the question of Gibraltar, in the light of relevant resolutions of the General Assembly and in the spirit of the Charter of the United Nations.”

VI. Future status of the Territory

A. Position of the administering Power

38. In his statement at the 3rd meeting of the Fourth Committee, on 5 October 2004, at the fifty-ninth session of the General Assembly (see A/C.4/59/SR.3), the representative of the United Kingdom made a statement regarding developments in the Non-Self-Governing Territories under its administration. He stated that the partnership between the United Kingdom and its Overseas Territories continued to develop. The sixth annual meeting of the Overseas Territories Consultative Council had been held in London in September 2004. The Council, which had been chaired by Bill Rammell MP, Minister for the Overseas Territories, was the forum for dialogue between democratically elected Chief Ministers and their equivalents from the Territories and with United Kingdom Government Ministers. The meeting in 2004 again gave the opportunity for discussion on the relationship between the United Kingdom and the Territories, on constitutional modernization issues, on sustainable development, including good governance and environmental matters, and on other issues relating to the United Kingdom’s international obligations.

39. The United Kingdom, the representative pointed out, welcomed the progress that was being made in the constitutional review process. Constitutional reform proposals for Gibraltar had been submitted in December 2003. Dates had not yet been set for formal talks.¹⁶

40. Conscious of the limited resources in a number of the Territories, the United Kingdom Government was continuing to support projects in various fields to raise local capacity and to promote sustainable development and good governance. Projects ranged from economic diversification, to the reform of legislation

governing child and family welfare, to a study on the alternatives to custodial sentencing.

41. He recalled that in 2003, the representative of the United Kingdom had said that additional funds had been expected to be provided by the Foreign and Commonwealth Office and the Department for International Development to support environment work in the Territories and the implementation of the Environment Charters for the Overseas Territories, signed in 2001. This joint Overseas Territories Environment Programme was funding 23 new projects in 2004-2005, of which three were multi-Territory initiatives. These included habitat restoration, surveys of natural living resources and capacity-building for both Government and civil society institutions.

42. The United Kingdom representative mentioned that, in response to requests from some Overseas Territories for help in accessing European Commission economic, trade and development assistance, an official with responsibility for liaising with the Commission had been appointed last year to the Foreign and Commonwealth Office Overseas Territories Department. He continued to work with several of the Territories in identifying and pursuing Commission development aid as provided for under the European Union-Overseas Countries and Territories Overseas Association Decision of November 2001.

43. The representative said that the United Kingdom continued its informal cooperation with the Special Committee of 24. The most recent involvement had been when a United Kingdom representative had attended and presented a paper on constitutional developments in the United Kingdom Territories at the Special Committee seminar in Papua New Guinea in May 2004.

B. Position of the territorial Government

44. During 2004, the Chief Minister of Gibraltar, Peter Caruana, made numerous statements on the status of Gibraltar and the Territory's position with respect to the talks between Spain and the United Kingdom. On 8 June 2004, speaking at the 4th meeting of the Special Committee of 24 on the occasion of its debate on the question of Gibraltar, Mr. Caruana reiterated Gibraltar's call for the Committee to visit Gibraltar to see and judge the facts for itself. He also reiterated Gibraltar's call for the Committee to recommend to the Fourth Committee that, since there was a disagreement between the parties as to the applicable international law principles, the case be referred to the International Court of Justice for an advisory opinion. Gibraltar also called for changing the resolution so that it would reflect a call for the Government of Gibraltar to be present at any talks affecting Gibraltar.

45. On 6 October 2004, speaking at the 4th meeting of the Fourth Committee, the Chief Minister, while reiterating the arguments presented in his speech before the Special Committee of 24, said that the United Nations had repeatedly declared that in the process of decolonization there was no alternative to the principle of self-determination and that it was not properly and correctly arguable that territorial integrity was a relevant principle in the decolonization process. Referring to Spain's argument that, because of its sovereignty claim, the principle of self-determination cannot apply to the decolonization of Gibraltar, Mr. Caruana pointed out that General Assembly resolution 2625 (XXV) of 24 October 1970, entitled "Declaration on Principles of International Law concerning Friendly Relations and Cooperation

among States in accordance with the Charter of the United Nations", was the only explicit declaration by the United Nations on the interrelationship between the principles of self-determination, on the one hand, and territorial integrity, on the other. The proper meaning and effect, and proper application of the principle of territorial integrity in relation to the principle of self-determination was that the principle of self-determination was not available to the peoples of part of an existing country to enable them to secede from it. He said Spain and its Government were not a State or Government representing the people of Gibraltar and had not been so for 300 years and that Gibraltar's self-determination would not disrupt Spain's territorial integrity. Furthermore, Mr. Caruana argued that nowhere in the Charter or in United Nations doctrine or elsewhere in international law was it written that a neighbour's sovereignty claim overrode, let alone extinguished, the inalienable right to self-determination of a colonial people. Concluding, he said that the President of Spain, in his address to the General Assembly, had said that Spain remained willing to negotiate a solution beneficial to the whole region and to listen to the voice of Gibraltar. Mr. Caruana stated that he had welcomed that statement as representing a constructive step in the right direction. He emphasized that Gibraltarians were entitled to be heard and their wishes respected, even by those who did not agree with their position and who had different aspirations in the matter. The future of Gibraltar could be decided only by the people of Gibraltar.

46. Mr. Caruana also pointed out that he had welcomed publicly statements by the Spanish Foreign Minister and the opportunity which the new Spanish Government had offered of dialogue aimed exclusively at issues of local cooperation with no sovereignty implications for either side. He said his Government would engage constructively and amicably in such a process, which coincides with its own long-standing policy to the same effect. Mr. Caruana emphasized that sovereignty was altogether a different matter upon which concessions would not be made and should not be expected as part of this process. He reiterated the request that the Committee's resolution should call for a programme of action in the case of Gibraltar to comprise a visit by the Special Committee on Decolonization to Gibraltar to see and judge the facts for itself. Also, since there was disagreement between the parties as to the applicable international law principles, which was holding back a solution, the case should be referred by the Fourth Committee to the International Court of Justice for an advisory opinion on those principles. Lastly, he said that the Fourth Committee's resolution should be changed to reflect a call for the Government of Gibraltar, on behalf of the people of Gibraltar, to be fully, properly and safely able to be present at any talks affecting Gibraltar.

47. In his New Year message in January 2005, the Chief Minister said that a major political development was the agreement in December between the Governments of the United Kingdom, Spain and Gibraltar to set up a new, trilateral process of dialogue outside the Brussels Process. It was to be dialogue on an open-agenda basis. Gibraltar had its own separate voice and would participate on the same basis as the United Kingdom and Spain. He said all sides looked forward to participating in the dialogue and to seeking such agreements as might be possible which would enhance cooperation, improve cross-border relations and improve the economies, societies and qualities of lives of people on both sides of the border. The only constraint was that the sovereignty of their homeland and their political rights as a people to decide their own future must not be adversely affected or prejudiced in any way. As far as Gibraltar was concerned, the Brussels Agreement was now

totally irrelevant and should be formally abandoned by the United Kingdom and Spain at the earliest opportunity. There was no prospect of Gibraltar's participation in it, nor could there be any question of parallel bilateral talks about sovereignty between the United Kingdom and Spain.

C. Position of the Government of Spain

48. On 21 September 2004, speaking before the General Assembly, the Prime Minister of the Kingdom of Spain, José Luis Rodríguez Zapatero, referred to Gibraltar and stated that every year the General Assembly reiterated its calls to Spain and the United Kingdom to pursue bilateral negotiations in order to reach a definitive solution to the dispute. The Prime Minister said that his country would continue its willingness to negotiate a solution that benefited the region as a whole and to listen to the voice of that Non-Self-Governing Territory.

49. On 6 October 2004, the representative of Spain, speaking at the 4th meeting of the Fourth Committee (see A/C.4/59/SK.4), referred to the statement made by the Prime Minister at the plenary meeting of the General Assembly, urging the Governments of Spain and the United Kingdom to continue their negotiations with the objective of reaching a definitive solution to the problem of Gibraltar. The Spanish representative also referred to the statement by the Minister for Foreign Affairs and Cooperation of Spain, who had presented the general position on the question of Gibraltar.

50. The Minister had spoken in favour of a dispassionate effort to arrive at a comprehensive agreement acceptable to all the parties involved in any way in the dispute. He had likewise stated that the Spanish Government was willing, within the framework of sovereignty negotiations, to facilitate the establishment of close and fruitful cooperation between Gibraltar and the surrounding area, so that the provision of services could be placed on a more rational footing and be mutually beneficial, provided that the economic model of Gibraltar was fully in keeping with European Union norms. The Spanish Government favoured the creation of "virtuous circles" of cooperation, enabling all the parties concerned to collaborate, making concessions and reaping positive benefits on a non-zero-sum basis. The Minister similarly pointed out that the Gibraltar-Campo de Gibraltar region could be among the most economically and technologically developed parts of the Iberian Peninsula because of the considerable advantages offered by its situation. He emphasized that it was a region of considerable economic potential. Over and above economic concerns, the Spanish Government's policy towards Gibraltar needed to include a significant person-to-person dimension, with contacts between civil societies. It was obvious that thorough-going negotiations on sovereignty issues could not go forward satisfactorily in a climate of confrontation, even if only because the Gibraltarians had to be involved in them, through an agreed formula, for them to be able to serve any practical purpose and because Spain wished to build a shared future of social concord in which the people of Gibraltar would feel at home. The Spanish Government wished to devote all the necessary time to this project, seeking to ensure that what united them would prevail over the high feelings roused by what separated them or set them at loggerheads. The representative of Spain pointed out that, while preferring dialogue to pointless confrontation, the Spanish Government would continue to vigorously defend its positions when these are based on reason and justice.

51. The representative of Spain, referring to the suggestion made by some speakers that the General Assembly should request an advisory opinion from the International Court of Justice, said that the matter was not a completely new one. He recalled that on 10 November 1966, the Spanish delegation had made a statement regarding a similar case, made public in London, following a meeting between the Spanish and British authorities, to the effect that the problem of Gibraltar was essentially a political matter and part of the decolonization process. The statement had likewise stressed that all the legal problems raised by Gibraltar, including that of its sovereignty, were part and parcel of its status as a Non-Self-Governing Territory, which the United Nations regarded as the main subject of the negotiation. There would therefore not be much sense in requesting an advisory legal opinion on an eminently political issue which must be settled at the political level and which was precisely what Spain and the United Kingdom were doing in compliance with the annual resolution adopted by the General Assembly. He concluded by saying that to act in any other way would be tantamount to diverting attention from what should be the core concern of the process in which they were engaged.

D. United Kingdom-Spanish negotiations

52. As mentioned in previous working papers, the negotiations between the United Kingdom and Spain on the subject of Gibraltar, relaunched in July 2001 in the framework of the Brussels Process, did not continue during 2003 (see A/AC.109/2003/3, paras. 52-54, and A/AC.109/2004/7, paras. 51-53). However, according to a joint press release by the Spanish Ministry for Foreign Affairs, the British Foreign and Commonwealth Office and the Government of Gibraltar dated 16 December 2004:

“On 27 October 2004, the British and Spanish Ministers, Jack Straw and Miguel Angel Moratinos, made a joint statement in Madrid, on which the Chief Minister of Gibraltar, Peter Caruana, had been consulted and has separately expressed his agreement. Accordingly and without prejudice to their respective positions, the Governments of Spain and the United Kingdom and Gibraltar now confirm the establishment of a new three-sided forum for dialogue on Gibraltar, separate from the Brussels Process.”¹⁷

53. They agreed that the forum would adopt the following work modalities: (a) the dialogue would be based on an open agenda and consequently, any of the participants would be able to raise any issue relating to or affecting Gibraltar; (b) without prejudice to their constitutional status, including the fact that Gibraltar is not an independent sovereign State, each of the parties would have its own, separate voice and each would participate on the same basis; (c) any decision or agreement reached in the forum would have to be agreed to by each of the three participants. If the three parties wished to take a decision in the forum where formal agreement would properly be between Spain and the United Kingdom, it was understood that the United Kingdom would not agree thereto without the consent of the Government of Gibraltar; (d) the forum would be convened at the ministerial level by the three parties at least once every 12 months. Other meetings would take place at a time and level agreed by the three participants; (e) the forum could establish working groups as needed to discuss specific issues; (f) in its deliberations, the forum would bear in mind the activities of the Comisión mixta de Cooperación y Colaboración established on 18 November 2004 between the Mancomunidad de

Municipios de la Comarca del Campo de Gibraltar and the Government of Gibraltar, to ensure coordination between the work of the forum and the Comisión mixta.

54. The parties undertook that, through the forum and these modalities, they would endeavour to create a constructive atmosphere of mutual confidence and cooperation for the benefit and prosperity of Gibraltar and the region, in particular the Campo de Gibraltar. Also, in order to maintain the viability of the process for all the parties, they agreed to refrain from making public statements which distorted or misrepresented the basis, purpose or modalities of the forum as set out in the communiqué.¹⁸

55. The first meeting of a Forum working group took place in January 2005 to examine and discuss the pension entitlements of Spanish workers who had worked in Gibraltar.¹⁹ The joint statement of 27 October by the Secretary of State for Foreign and Commonwealth Affairs and the Minister for Foreign Affairs of Spain listed several cooperation measures to facilitate the start of the work of the forum. Those measures included allowing the inclusion of Spanish airports as alternative airports in the flight plans whose final destination is the airport of Gibraltar and the Spanish Government allowing calls at Spanish ports of all pleasure cruise liners having the port of Gibraltar as a previous or subsequent port of call, without restriction. Meetings of the working groups on telecommunications and on the airport of Gibraltar took place in the first quarter of 2005.²⁰

E. United Kingdom-Gibraltarian discussions

56. The Government of the United Kingdom has reiterated on several occasions that it remains committed to considering proposals for constitutional change in its Territories. On 26 May 2004, the United Kingdom Foreign Secretary, Jack Straw, met with the Chief Minister of Gibraltar, Peter Caruana, for preliminary talks on the local constitutional reform proposals and on the mechanism for taking the process forward. The first meeting to discuss the reform proposals for Gibraltar took place on 1 December 2004.

Notes

¹ Information contained in the present working paper has been derived from information transmitted to the Secretary-General by the Government of the United Kingdom of Great Britain and Northern Ireland under Article 73 e of the Charter of the United Nations, in January 2005, as well as from official documents of the Government of Spain and published sources.

² *Official Records of the General Assembly, Twenty-fourth Session, Supplement No. 23* (A/7623/Rev.1), vol. III, chap. XI, annex, paras. 7-23.

³ "Partnership for Progress and Prosperity: Britain and the Overseas Territories", White Paper submitted to the House of Commons on 17 March 1999 by the United Kingdom Secretary of State for Foreign and Commonwealth Affairs; reproduced in A/AC.109/1999/1, annex.

⁴ Government of Gibraltar press release, "Chief Minister's New Year message", 1 January 2003.

⁵ British Overseas Territories Bill, Explanatory Notes, House of Lords, 26 June 2000.

⁶ Government of Gibraltar press release, 11 July 2002.

⁷ United Kingdom Parliament, Foreign Affairs Committee, Eleventh Report on Gibraltar, 5 November 2002.

- ⁸ Organization for Economic Cooperation and Development, *Progress in Identifying and Eliminating Harmful Tax Practices*, June 2000.
- ⁹ Agence France-Presse, 14 March 2002.
- ¹⁰ *Gibraltar Chronicle* and *El País*, 15 March 2002.
- ¹¹ Agence France-Presse English Wire, 21 January 2005.
- ¹² Government of Gibraltar, Chief Minister's speech on the economy-GFSB, 27 January 2005.
- ¹³ Reuters and *El País*, 8 March 2001.
- ¹⁴ European Union, Legislative Acts and Other Instruments, Regulation of the European Parliament and of the Council laying down the framework for the creation of the Single European Sky.
- ¹⁵ *Gibraltar Chronicle*, 10 February 2005.
- ¹⁶ Subsequently it was reported that the first round of talks was held in December 2004.
- ¹⁷ *El País*, Madrid, 22 December 2004; Agence France-Presse English Wire, 16 December 2004.
- ¹⁸ Ibid.
- ¹⁹ *Gibraltar Chronicle*, Gibraltar, 28 January 2005.
- ²⁰ *Panorama, Gibraltar's Online Daily, Gibraltar news*, 3 February 2005.